

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVE FERRARI, ET AL.,

Plaintiffs,

vs.

MERCEDES BENZ USA, LLC, ET AL.,

Defendants.

CASE NO. 17-cv-00018-YGR

**ORDER STRIKING PROPOSED FIFTH
AMENDED COMPLAINT; ORDER TO SHOW
CAUSE WHY MOTION TO DISMISS SHOULD
NOT BE GRANTED WITHOUT LEAVE TO
AMEND**

The Court **HEREBY STRIKES** the proposed Fifth Amended Complaint ("5AC"), filed January 24, 2019 (Dkt. No. 178) as having been filed in direct violation of the Court's limited permission to file a red-line version of the operative complaint, striking out those portions of the claims released by the settlement with the Autobahn defendants, and therefore no longer relevant to claims against Mercedes Benz USA, LLC ("MBUSA").

Further, the Court issues this **ORDER TO SHOW CAUSE** why the motion dismiss of MBUSA (Dkt. 163) should not be granted with prejudice. MBUSA submits that the proposed 5AC effectively concedes that plaintiffs, in their Fourth Amended Complaint, have not stated a claim as against MBUSA as additional allegations are necessary and such allegations directly contradict those previously asserted and necessary to the basis of the settlement recently approved by this Court. The Court tends to agree.

Plaintiffs shall file a written response to the Order to Show Cause by **February 25, 2019**. Defendant MBUSA may file a reply by **March 11, 2019**. Each filing shall not exceed eight (8) pages. Failure to file a response shall be deemed an admission that the granting of the motion with prejudice is appropriate.

IT IS SO ORDERED.

Dated: February 8, 2019



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE